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BellSouth Telecommunications, Inc
333 Commerce Street
Suite 2101
Nashville, TN 37201-3300

guyhicks@bellsouth.com

TRA DOCKET ROOM
December 16, 2004

Guy M Hicks
General Counsel

615 214 6301
Fax 615 214 7406

VIA HAND DELIVERY

Hon. Pat Miller, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *Complaint of AT&T Against BellSouth Over Tariff to Amend
Jurisdictional Report Requirements (No. TN2004-138)*
Docket No. 04-00405

Dear Chairman Miller:

Enclosed are the original and fourteen copies of the public version of BellSouth's *Response and Answer* in the captioned matter.

Please note that there are four numbers redacted from BellSouth's *Response*. BellSouth has redacted these numbers because it believes that this information is proprietary. BellSouth will provide an unredacted version of its response as soon as a Protective Order is entered in this proceeding

Copies of the enclosed are being provided to counsel of record.

Very truly yours,


Guy M. Hicks

GMH:ch

PUBLIC VERSION

**BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee**

In Re: *Complaint of AT&T Against BellSouth Over Tariff to Amend Jurisdictional Report Requirements* (No. TN2004-138)

Docket No. 04-00405

**RESPONSE AND ANSWER OF
BELLSOUTH TELECOMMUNICATIONS, INC.**

BellSouth Telecommunications, Inc. ("BellSouth") submits this Response and Answer to the Petition and *Complaint* ("*Complaint*") filed by AT&T Communications of the South Central States, LLC ("AT&T"). For the following reasons, the Tennessee Regulatory Authority ("TRA" or "Authority") should reject AT&T's arguments and find in favor of BellSouth.

INTRODUCTION

BellSouth terminates long distance traffic for Interexchange Carriers ("IXCs"). When BellSouth terminates an interstate call for an IXC, it charges the IXC a tariffed interstate access charge. When BellSouth terminates an intrastate call for an IXC, it charges the IXC a tariffed intrastate access charge. Due to the volume of traffic terminated by BellSouth, BellSouth imposes these charges on a monthly basis by using a terminating percent interstate usage ("TPIU") factor to determine how many minutes terminated by BellSouth are subject to interstate and intrastate access charges. The TPIU takes into account all traffic that BellSouth terminates for a particular carrier. Thus, if the IXC has a TPIU of 70 percent, then

BellSouth will charge the IXC interstate access rates for 70 percent of the total minutes terminated and intrastate access rates for the remaining 30 percent.

When BellSouth terminates a call for an IXC, the IXC is required by federal law (47 CFR § 64.1601) to pass along calling information or Calling Party Number ("CPN") data. This data allows BellSouth to determine whether the call is interstate or intrastate in nature. Due to certain technical limitations, however, certain calls sent to BellSouth by IXCs legitimately lack sufficient CPN data to enable BellSouth to determine whether the call is interstate or intrastate in nature. These types of calls include operator services calls, international calls, and calls that use in-band signaling methodology. In the summer of 2004, BellSouth determined through a study performed by Agilent Technologies ("Agilent Study") that approximately 7 percent of IXC traffic is legitimately unidentifiable as a result of the above-identified technical limitations. This conclusion is buttressed by the fact that only **[PROPRIETARY INFORMATION*]** percent of AT&T's traffic in BellSouth's region for September 2004 lacked CPN data.¹

In practice, however, much more than 7 percent of the terminating traffic sent by many IXCs to BellSouth in Tennessee is missing CPN. For instance, in September 2004, 11 IXCs submitted approximately 90,000,000 minutes to BellSouth that lacked CPN. These minutes represented anywhere from 10 to 28 percent of the subject IXCs' total traffic.

* Proprietary information to be submitted upon entry of a Protective Order

¹ AT&T's percentage for Tennessee in September 2004 was **[PROPRIETARY INFORMATION]** percent

The lack of CPN adversely affects BellSouth by skewing the TPIU factor for each of these IXCs, because it removes the “unknown” minutes from the TPIU determination. Thus, if a carrier has 50 known minutes of which 70 percent were interstate and 30 percent were intrastate and 50 unknown minutes, the TPIU would be based on the 50 known minutes. As a result, without the Tariff, a 70 percent TPIU would be applied to 100 percent of the traffic even though half of the total minutes were unidentifiable. This scenario prevents BellSouth from rightfully recovering the actual charges it is owed for terminating the IXCs’ traffic.

Consequently, on or about October 1, 2004, BellSouth filed a revision to its Access Service Tariff (“Tariff”) in Tennessee to reflect a 7 percent CPN floor.² The effect of this revision is that for each IXC, any unidentifiable minutes exceeding 7 percent of the total minutes terminated by BellSouth will be treated as intrastate access minutes and will be charged at intrastate access rates. See Tariff at E2.3.14(A)(1)(a). Thus, as stated in the Tariff, “[f]or example, if 30 percent (%) of a customer’s minutes sent to BellSouth do not contain sufficient originating information to allow BellSouth to determine the originating location, then BellSouth would apply the provisions of this tariff to those minutes exceeding the ‘floor’, or 23 percent (%) in this example.” *Id.*

This Tariff revision encourages all carriers to pass along all CPN data that is technically capable of being passed, which will result in a more accurate depiction of the jurisdictionally of the calls that BellSouth terminates for each IXC.

² Prior to this time period, the CPN floor was 19.22 percent and was based on the composite percentage of traffic from all carriers in BellSouth’s region that lacked CPN data. As a result and as confirmed by the Agilent Study, the 19.22 percent was artificially inflated because it took into account all calls that lacked CPN, whether legitimate or not.

Regardless of the reason for the lack of the CPN data, BellSouth terminated the minutes in question and has the right to be properly compensated at the appropriate rate.

BellSouth recognizes that, for some carriers, there may be legitimate reasons why a percentage of its calls exceed 7 percent of its total minutes. And, the Tariff provides recourse for a carrier that disputes the application of the intrastate rate for those minutes in excess of the 7 percent floor. First, the IXC can dispute charges it feels are not appropriate. Second, under the Tariff, the IXC can (1) ask BellSouth for documentation to support the application of the intrastate rate based on the 7 percent floor; and (2) request that BellSouth change the application of the intrastate rate "upon a showing that the intrastate rate should not be applied." *Id.* Thus, if an IXC proves that calls lacking CPN in excess of the 7 percent floor were interstate and not intrastate in nature, then BellSouth will apply the appropriate interstate charges to the minutes in question.

Of course, the only carrier to complain about this tariff – AT&T – likely has no need for such recourse. As noted above, AT&T historically has been at or below the [PROPRIETARY INFORMATION] percent floor, and if this continues in the future, AT&T simply will not be impacted by this tariff.³ Therefore, BellSouth is at a loss as to why AT&T has filed the instant *Complaint*. Further, the Agilent Study supports a conclusion that approximately 7 percent of an IXC's traffic should lack CPN data. Thus, higher percentages are not warranted and carriers

³ Indeed, in the two other states where AT&T filed an identical *Complaint*, Florida and South Carolina, the percentage of traffic submitted by AT&T to BellSouth in those states for September 2004 was [PROPRIETARY INFORMATION] percent and [PROPRIETARY INFORMATION] percent respectively

should, consistent with federal law, do everything in their power to provide BellSouth with sufficient data to allow it to accurately charge IXCs for the actual services provided. This Tariff encourages IXCs to do just that, while at the same time giving them the right to dispute the application of the Tariff and prove that the 7 percent floor should not apply. The Authority should, therefore, reject AT&T challenges.

RESPONSE TO SPECIFIC ALLEGATIONS

1. Paragraph 1 of the *Complaint* does not require a response from BellSouth.

2. Paragraph 2 of the *Complaint* does not require a response from BellSouth.

3. BellSouth admits Paragraph 3 of the *Complaint*. BellSouth also states that all correspondence should be sent to the undersigned in addition to the address identified in Paragraph 3 of the *Complaint*.

4. BellSouth admits that AT&T is certified by the Authority as an IXC and as a CLEC, and states that AT&T provides long distance service and purchases switched access services from BellSouth.

5. BellSouth denies the allegations of Paragraph 5 of the *Complaint*, except to admit that (1) BellSouth is an incumbent local exchange company ("ILEC") and is certificated by the Authority to provide local exchange services; (2) pursuant to Authority Rules, Tennessee statutes, and the Tariff, BellSouth charges IXCs intrastate access charges; (3) that the Authority has approved an intrastate switched access rate that BellSouth charges to IXCs; and (4) BellSouth's approved

intrastate switched access rate in Tennessee is higher than its interstate access rate.

6. BellSouth denies the allegations contained in Paragraph 6 of the *Complaint*, except to admit that, on or about October 1, 2004, BellSouth filed a revision to its Tennessee Access Service Tariff (previously defined as "Tariff") and that this revision was effective on or about October 21, 2004.

7. BellSouth denies the allegations contained in Paragraph 7 of the *Complaint*, except to admit that the 7 percent floor established in the Tariff was based upon the Agilent Study and that this Study supports a finding that approximately 7 percent of an IXC's traffic is legitimately unidentifiable due to technical limitations. BellSouth further admits that prior to the October 1, 2004 revision, the Tariff contained a 19.22 percent floor, which was based on the total minutes received by BellSouth on a region-wide basis that lacked CPN, whether legitimate or not.

8. BellSouth denies the allegations contained in Paragraph 8 of the *Complaint*, except to state that Tennessee Code Annotated § 65-4-103 speaks for itself and is the best evidence of its terms and conditions.

9. BellSouth denies the allegations contained in Paragraph 9 of the *Complaint*.

10. BellSouth denies the allegations contained in Paragraph 10 of the *Complaint*, except to state that Tennessee Code Annotated § 65-4-124 and § 65-5-108(c) speak for themselves and are the best evidence of their terms and conditions.

11. BellSouth denies the allegations contained in Paragraph 11 of the *Complaint*.

12. BellSouth denies the allegations of Paragraph 12 of the *Complaint*, except to admit that it has a billing agreement with AT&T.

13. BellSouth denies that AT&T is entitled to any relief requested in the WHEREFORE clause.

14. Any allegation not expressly admitted herein is denied.

AFFIRMATIVE DEFENSES

1. AT&T's *Complaint* fails to state a claim upon which relief can be granted.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.

By: 

Guy M. Hicks
Joelle J. Phillips
333 Commerce Street, Suite 2101
Nashville, TN 37201-3300
615/214-6301

R. Douglas Lackey
James Meza III
675 W. Peachtree St., NE. Suite 4300
Atlanta, GA 30375

11. BellSouth denies the allegations contained in Paragraph 11 of the *Complaint*.

12. BellSouth denies the allegations of Paragraph 12 of the *Complaint*, except to admit that it has a billing agreement with AT&T.

13. BellSouth denies that AT&T is entitled to any relief requested in the WHEREFORE clause.

14. Any allegation not expressly admitted herein is denied.

AFFIRMATIVE DEFENSES

1. AT&T's *Complaint* fails to state a claim upon which relief can be granted.

Respectfully submitted,

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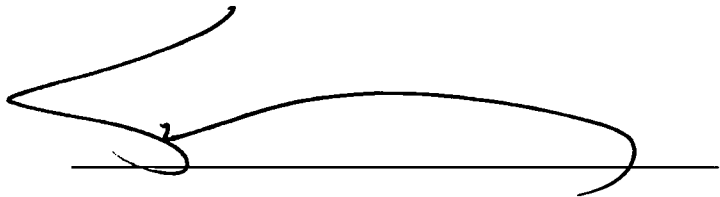
R. Douglas Lackey
James Meza III
675 W. Peachtree St., NE. Suite 4300
Atlanta, GA 30375

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2004, a copy of the foregoing document was served on the following, via the method indicated:

- ☐ Hand
- ☐ Mail
- ☐ Facsimile
- ☐ Overnight
- ☒ Electronic

Henry Walker, Esquire
Boult, Cummings, et al.
1600 Division Street, #700
P. O. Box 340025
Nashville, TN 37203
hwalker@boultcummings.com

A handwritten signature in black ink, appearing to be "H. Walker", is written over a horizontal line.